

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

D.H.,

*Plaintiff,*

v.

WILLIAMSON COUNTY  
BOARD OF EDUCATION, *et al.*,

*Defendants.*

Case No. 3:22-cv-00570

District Judge William L. Campbell, Jr.

Magistrate Judge Jeffery S. Frensley

**THE DEPARTMENT AND COMMISSIONER OF EDUCATION'S  
MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Tennessee Department of Education and Defendant Penny Schwinn, in her official capacity as Commissioner of the Department of Education, move for an order from this Court dismissing the claims asserted against them in this lawsuit for failure to state a viable claim to relief. As the arguments and authorities set out in the accompanying Memorandum of Law demonstrate, Plaintiff D.H.'s equal protection claim fails as a matter of law because the Constitution allows the long-standing practice of separating bathrooms by sex—a practice D.H. does not even challenge—and D.H.'s allegations and alternative theories all fail to support this claim. Plaintiff's Title IX claim fails as a matter of law because Title IX explicitly allows schools to maintain sex-separated bathrooms, and, in any event, the separation of

bathrooms based on sex is not “discrimination” under Title IX. Because Plaintiff cannot cure the defects in the complaint, dismissal should be with prejudice.

Dated: October 25, 2022

Respectfully Submitted,

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*Tennessee Solicitor General*

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/s/ Alexander S. Rieger  
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## **CERTIFICATE OF SERVICE**

I certify that I filed the above document using the Court's CM/ECF system on October 25, 2022, which electronically served a copy to all counsel of record, namely:

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